

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

November 16, 2009

Charles R. Fulbruge III
Clerk

No. 08-60387
Summary Calendar

KIREN KUMAR BHARTI, also known as Kirenkumar Satish Bharti,

Petitioner

v.

ERIC H. HOLDER, JR., U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A75-780-661

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

Petitioner Kiren Kumar Bharti, a native and citizen of the United Kingdom, petitions for a review of an order of the Board of Immigration Appeals (BIA). It found him ineligible for cancellation of removal because his second 1998 Mississippi conviction for simple possession of a controlled substance was an aggravated felony for purposes of immigration law.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Bharti's argument that *Lopez v. Gonzales*, 549 U.S. 47, 58-60 (2006), overruled *United States v. Sanchez-Villalobos*, 412 F.3d 572, 576-77 (5th Cir. 2005), is unavailing. See *Carachuri-Rosendo v. Holder*, 570 F.3d 263, 266-68 (5th Cir. 2009), *petition for cert. filed* (July 15, 2009) (No. 09-60). Further, we have rejected Bharti's argument that a second or subsequent state offense cannot be a felony under 21 U.S.C. § 844 unless the prosecutor gives notice pursuant to 21 U.S.C. § 851 of the intent to use a previous conviction to increase the sentence. See *United States v. Cepeda-Rios*, 530 F.3d 333, 336 n.11 (5th Cir. 2008). *Carachuri-Rosendo* affirmed the continuing validity of *Cepeda-Rios*. *Carachuri-Rosendo*, 570 F.3d at 266. Finally, in *Carachuri-Rosendo* we rejected Bharti's argument that a second possession offense that renders an alien an aggravated felon must have been prosecuted under a state recidivism law for it to be considered an aggravated felony for immigration purposes. See *id.* at 268.

Under *Carachuri-Rosendo*, Bharti is considered to have committed an aggravated felony for immigration purposes because, since his admission to the United States, he has been convicted on more than one occasion of possession of a controlled substance. See *id.* at 266; § 844(a). Bharti is therefore ineligible for cancellation of removal. See *Carachuri-Rosendo*, 570 F.3d at 266-68; 8 U.S.C. § 1229b(a).

PETITION DENIED.